IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 622 of 2004

to

FIRST APPEAL No 634 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SPL.LAQ OFFICER

Versus

JAFIRHUSEIN HASANBHAI

Appearance:

1. First Appeal No. 622 of 2004

MR AD OZA GP for Appellant No.

MR AJ PATEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and

HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 23/03/2005

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. All these appeals are heard and disposed of by this common order as they are arising out of the impugned common judgment and award dated 29.12.2001 passed by the learned Extra Assistant Judge, Mehsana in Land Acquisition Reference Case Nos.1173 to 1185 of 1998 (main LAR No.1175/98).

#. Notification under Section 4 of the Land Acquisition Act, 1894 (for short "the Act") was issued on 24.6.1996 followed by notification dated 6.12.1997 issued under Section 6 of the Act. The claimants claimed in all Rs.50/= before the Special Land Acquisition Officer after considering their objections by its award dated 31.8.1998 the Special Land Acquisition Officer has awarded Rs.4.50 per sq. mtr. for irrigated land and Rs.3.00 per sq. mtr. for non-irrigated land. The lands of the claimants were acquired for the purpose of Narmada Canal Project. Aggrieved and dissatisfied with this award dated 31.8.1998 passed by Special Land Acquisition Officer, claimants filed Land Acquisition Reference Case Nos.1173 to 1185 of 1998 before the court of Extra Assistant Judge, Mehsana. The learned Judge treated LAR No.1175 of 1998 as main case and proceeded to decide all the Land Reference cases by his impugned common judgment on 29.12.2001 whereby he partly allowed all the reference and ordered to pay additional compensation @Rs.50/= per sq. mtr. to the claimants over and above the amount of compensation awarded to them by Special Land Acquisition Officer @Rs.4.50 for irrigated land and Rs.3.00 for non-irrigated land per sq. mtr. This has been challenged in all these appeals filed by the present appellants.

#. On behalf of the claimants reliance was placed on the following documents :-

(1) Ex.12 - village form No.7-12.

(2) Ex.13 - Judgment dated 26.2.1993 passed in LAR No.34/86 passed by the Second Extra Assistant Judge, Mehsana awarding in all Rs.21/= per sq. mtr. to the claimants of that case, which was accepted by the State Government and the Claimants have already received that amount (as

stated at the Bar by learned counsel Mr.Patel for the present respondents-claimants).

(3) Ex.14 - Judgment dated 16.6.1995 passed by the learned Assistant Judge, Mehsana in Land Acquisition Reference Case No.366/89 awarding additional compensation @Rs.19.45 in all Rs.20 per sq. mtr. to the claimants.

(4) Ex.15 - Judgment dated 3.8.1996 delivered by the Division Bench of this court in First Appeal No.6484/95 confirming the judgment and award dated 16.6.1995 (Ex.14) passed by the Assistant Judge, Mehsana (as stated at the Bar by learned counsel Mr.Patel for the present respondents-claimants).

(5) Ex.16 - Judgment and award dated 3.8.1999 in LAR No.2865/93 and 2866/93 passed by Assistant Judge, Mehsana awarding in all Rs.3.05 (rent per year) per sq. mtr. for temporary acquisition of the land by the ONGC (as stated at the Bar by learned counsel Mr.Patel for the present respondents-claimants).

(6) Ex.17 - Judgment and award dated 4.11.1999 passed by the Assistant Judge, Mehsana in LAR Nos.3191 to 3205 of 1993 awarding Rs.40.60 per sq. mtr. to the claimants (as stated at the Bar by learned counsel Mr.Patel for the present respondents-claimants).

(7) Ex.18 - Judgment dated 14.9.2001 of the Division Bench of this court in First Appeal No.682 of 2000 and other allied appeals awarding Rs.40 per sq. mtr to the claimants (as stated at the Bar by learned counsel Mr.Patel for the present respondents-claimants).

(8) Ex.19 - Judgment and award dated 15.10.2001 in LAR No.1205/98 passed by the Extra Assistant Judge, Mehsana awarding in all Rs.30 per sq. mtr. to the claimants (as stated at the Bar by learned counsel Mr.Patel for the present respondents-claimants).

(9) Ex.20 - Deposition of Anvarbhai Akabarbhai Malik (claimant).

(10) Deposition of Jagdishkumar Chhotalal Ramola (opponent).

#. Considering the oral as well as documentary evidences led before the learned Judge, he awarded additional compensation to the claimants @Rs.50/= per sq. mtr. over and above the amount of compensation of Rs.4.50 per sq. mtr. for the irrigated land and Rs.3.50 per sq. mtr. for non-irrigated land to the claimants by the impugned common judgment dated 29.12.2001. Aggrieved by this, the appellants have approached this court by way of these appeals.

#. At the outset, it may be stated that the learned 4th Joint Civil Judge (S.D.), Mehsana by his common judgment and award dated 27.11.2001 awarded additional compensation to the claimants of LAR No.353 to 363 of 2001 @Rs.26 per sq. mtr. over and above the compensation already awarded by the Special Land Acquisition Officer @Rs.4.50 per sq. mtr. Thus, in all Rs.30.50 per sq. mtr. was awarded to the claimants where notification under section 4 of the Act was published on 18.5.1992 followed by he notification dated 4.8.1992 issued under Section 6 of the Act for the very village of Adundara. Though it was prior in point of time and was delivered on 27.11.2001 the same was not produced by the appellants before the Extra Assistant Judge, Mehsana, who decided LAR Nos.1173 to 1185 of 1998 by his impugned common judgment and award dated 29.12.2001, therefore, to bring it on record of all thee appeals as additional evidence, the appellants had filed Civil Application Nos.2195 to 2207 of 2005. The said common judgment and award passed by the learned Judge was prior in point of time i.e. 27.11.2001, therefore, in ordinary circumstances, it would not have been allowed to be produced on record as additional evidence, but the learned counsel Mr.A.J.Patel appearing in all these appeals had consented to bring it on record for the correct adjudication of not only these appeals but also other group of appeals, therefore, the Civil Applications filed in all these appeals were allowed and the said judgment and award dated 27.11.2001 has now come on record on all these appeals at Ex.28.

#. Learned Government Pleader, Mr.A.D.Oza appearing in all these appeals vehemently submitted that the learned Extra Assistant Judge, Mehsana committed grave error in awarding additional compensation @Rs.50 per sq. mtr. over and above the amount of compensation awarded to them by Special Land Acquisition Officer @Rs.4.50 per sq. mtr. for irrigated land and Rs.3 per sq. mtr. for

non-irrigated land when the initial claim of the claimants was in all Rs.50/=. Mr.Oza also submitted that the learned Extra Assistant Judge has committed grave error in taking into considering the judgments produced before him by the claimants. They are of distant villages viz. Mathasur, Budasan, Karannagar and Nani Kadi. He submitted that only one judgment Ex.16 was of this very village Adundara where the court had awarded in all Rs.3.05 (rent which paid) per sq. mtr. to the claimants for the temporary acquisition of their lands, which comes to Rs.30.50 per sq. mtr. He also submitted that lands of Adundara village and other villages were for totally different purpose. Lands of Adundara village were temporarily acquired by the ONGC and that was a solitary case of a single claimant, whereas, for other villages it was either for the purpose of road or for GIDC or for ONGC and except for Karannagar village it was for Narmada Canal. Mr.Oza also submitted that once the judgment and award dated 27.11.2001 passed by the 4th Joint Civil Judge (S.D.), Mehsana in LAR Nos.353 to 363 of 2001 is permitted to be brought on record as an additional evidence and given Ex.28 then on the basis of the said award, which is of this very village of Adundara, then this court should reduce the compensation awarded to the respondents claimants.

#. However, learned counsel Mr.A.J.Patel appearing for the respondents in all these appeals vehemently submitted that apart from those judgments, the learned Judge has also taken into consideration various factors like potential value, area and situation of the lands, oral evidence led by the claimants regarding the land being fertile and they were taking 2 to 3 crops per year regularly, awarded additional compensation of Rs.50/= per sq. mtr., therefore, it should not be reduced. However, in view of the judgment and award dated 27.11.2001 passed by the 4th Joint Civil Judge (S.D.), Mehsana in LAR Nos.353 to 363 of 2001 Mr.Patel consented that the amount be reduced and the respondents-claimants be awarded in all Rs.42.70 per sq. mtr. as in the instant case notification under Section 4 was issued on 24.6.1996, whereas, in judgment at Ex.28 notification was issued on 18.5.1992.

#. In view of the above discussion, all these appeals are required to be partly allowed and accordingly the impugned common judgment and award dated 29.12.2001 passed by the Extra Assistant Judge Mehsana in LAR Nos.1173 to 1185 of 1998 is hereby modified and it is ordered that the present appellants shall pay total compensation @Rs.42.70 per sq. mtr. to the

respondents-claimants. Rest of the judgment and award passed by the learned Judge is not disturbed.

#. Before parting, we must state that the learned Government Pleader, Mr.Oza for the appellants submitted that the judgment dated 27.11.2001 (Ex.28) delivered by the 4th Joint Civil Judge (S.D.), Mehsana in LAR Nos.353 to 363 of 2001 is under challenge by this very appellants in another group of appeals i.e. First Appeal Nos.2959 to 2966 of 2004 on the ground that the learned Judge had not considered another common judgment and award dated 8.8.2001 passed by the Extra Assistant Judge, Mehsana in LAR Nos.2725 to 2741 of 1996 whereby the claimants were awarded total compensation @Rs.12/= only per sq. mtr., therefore, if this court decides these appeals first, then he would not be able to successfully challenge the judgment at Exh.28. Be that as it may. Such submission cannot be taken note of for two reasons; (i) that the judgment and award dated 8.8.2001 passed by the Extra Assistant Judge, Mehsana in LAR Nos.2725 to 2741 of 1996 is not on the record of these appeals and (2) that the judgment at Ex.28 delivered by the 4th Civil Judge (S.D.), Mehsana on 27.11.2001 is brought on the record of these cases at Exh.21 at the instance of appellants themselves.

Accordingly, these appeals are partly allowed to the aforesaid extent only. However, there shall be no order as to costs.

(B.J.Shethna, J.)

(M.C.Patel, J.)

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